IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4191 OF 1999

Shyanaram K. Pol..... ..... Petitioner.

Versus

The State of Maharashtra..... ... Respondent.

None for the Petitioner.

Mr. V. P. Malvankar, AGP for Respondent Nos.1 to 3.

CORAM : R. M. LODHA &
NARESH H. PATIL, JJ.

DATED : 11TH AUGUST, 2006.

P.C. :

None appears for the petitioner. We heard Mr. V. P. Malvankar, Assistant Government Pleader, for the respondent nos.1 to 3 and perused the judgment of the Maharashtra Administrative Tribunal dated 12th May, 1999. We also perused the Government Resolutions.

2. The Tribunal has taken into consideration the decisions of the Supreme Court in the cases of D. S. Nakara v/s Union of India, AIR 1983 SC 130; V. Kasturi v/s Managing Director, State Bank of India & another, 1998 AIR SCW 3431 and Union of India v/s P. N. Menon &

others, 1994 AIR SCW 1985. The Tribunal also considered the judgment of the Supreme Court delivered by the Constitution Bench in the case of Krishna Kumar v/s Union of India, AIR 1990 SC 1782. The Government Resolutions dated 19th September, 1979; 27th July, 1982 and 1st June, 1984 were also considered by the Tribunal. In paragraph 17 of the impugned order, the Tribunal held thus :

> "Thus, the Government resolutions in question could not be said to be arbitrary and making unreasonable discrimination amongst the pensioners. The action of the State Government in passing the various resolutions from time to time seems to be bringing all the pensioners on part as far as possible. There would be some difference and that is bound to be in view of the fact that the pay and allowances which they were drawing when they were serving were different. Thus, in our opinion, the Government resolutions in question are to be implemented in the light of its contents. It is not possible to give benefit of each resolution equally to each and every retiree. The intention in passing these resolutions is to neutralise the effect of increased cost of living, at a particular point of

time, by merging part of full allowance with pensionable emoluments for the purpose of calculation of pension in accordance with the policy adopted by Government of India. Further, these resolutions do not discriminate within pensioners as a class but the resolutions make a differentiation between those who were pensioners prior to cut off date and those who could achieve status of pensioners after cut off date, on the basis of extent of neutralisation of increased cost of living required at a particular point of time according to policy. Such classification is certainly not violative of Article 14 of the Constitution of India. As referred in earlier paras, the catena of decisions of the Apex Court permits such classification. In the circumstances, it is not possible to give benefit of these resolutions to each and every retiree."

3. We are in agreement with the view of the Tribunal that the Government Resolutions in question do not suffer from any arbitrariness or unreasonableness. Classification made in the Government Resolutions in question are permissible and cannot be said to be violative of Article 14 of the Constitution of India.

4. We find no infirmity in the impugned order warranting interference by this Court in extra ordinary jurisdiction.

5. By way of footnote, we may observe that we considered the matter on merits in the absence of the petitioner as, twice earlier, the writ petition was dismissed in default and then restored. This is third time that neither the petitioner nor his Counsel is present when the case was called out for hearing. We thought, instead of dismissing the writ petition in default, we must look into the legality and correctness of the impugned order.

6. We are in agreement with the view of the Maharashtra Administrative Tribunal. Writ petition is dismissed. Rule discharged. No costs.

Sd/-

(R. M. LODHA, J.)

Sd/-

(NARESH H. PATIL, J.)